

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

MOTOROLA MOBILITY, INC., and
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff.

CASE NO. C10-1823-JLR

DEFENDANTS' NONOPPOSITION TO
MICROSOFT'S 9/5/12 MOTION TO
FILE DOCUMENTS UNDER SEAL

**NOTED ON MOTION CALENDAR:
Friday, September 14, 2012**

DEFENDANTS' NONOPPOSITION TO MICROSOFT'S 9/5/12
MOTION TO FILE DOCUMENTS UNDER SEAL
CASE NO. C10-1823-JLR

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I. INTRODUCTION

Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, Inc. and General Instrument Corporation (collectively, “Motorola”) do not oppose Microsoft’s 9/5/12 Motion to File Documents Under Seal (Dkt. No. 401) regarding the following documents:

- Limited Portions Microsoft’s Opposition to Motorola’s *Daubert* Motion to Exclude Certain Testimony of Plaintiff’s Experts Drs. Lynde, Murphy, and Simcoe (“Microsoft’s Opposition”) (Dkt. No. 410); and
- Exhibits 1-3, 6-8, and 10-11 to the Declaration of Christopher Wion in Support of Microsoft’s Opposition (the “9/5/12 Wion Declaration”) (Dkt. No. 401).

II. MOTOROLA DOES NOT OPPOSE MICROSOFT’S MOTION TO SEAL

Exhibit 1 to the 9/5/12 Wion Declaration is the July 24, 2012 Expert Report of Kevin M. Murphy. The report, which is designated “ATTORNEYS’ EYES ONLY SUBJECT TO PROTECTIVE ORDER,” references non-public and commercially sensitive information regarding the parties’ business and licensing practices and strategies, and the terms of the parties’ licenses with third parties. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Accordingly, Exhibit 1 should remain under seal.

Exhibit 2 to the 9/5/12 Wion Declaration is the July 24, 2012 Expert Report of Matthew R. Lynde, Ph.D., Pursuant to Rule 26(a)(2)(B). The report, which is designated as “MICROSOFT/MOTOROLA CONFIDENTIAL BUSINESS INFORMATION OUTSIDE ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER,” contains highly confidential Motorola and Microsoft information relating to business and licensing practices and history. This document also contains references to documents that contain the confidential information of non-parties to this action, and that disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm.

1 Accordingly, Exhibit 2 should be sealed in its entirety. An excerpt of this document was also
2 submitted by Motorola as sealed Exhibit 5 to the Declaration of Samuel L. Brenner (Dkt. No.
3 392).

4 Exhibit 3 to the 9/5/12 Wion Declaration is the July 24, 2012 Expert Report of Timothy S.
5 Simcoe. The report, which is designated "ATTORNEYS' EYES ONLY SUBJECT TO
6 PROTECTIVE ORDER," references non-public and commercially sensitive information
7 regarding the parties' business and licensing practices and strategies, and the terms of the parties'
8 licenses with third parties. Disclosure of this information to third parties and other party
9 employees not covered by the protective order would have the potential to lead to competitive
10 harm. Accordingly, Exhibit 3 should remain under seal.

11 Exhibit 6 to the 9/5/12 Wion Declaration is the transcript of the deposition of Kevin M.
12 Murphy, which was taken under oath in Chicago, Illinois, on August 31, 2012. This transcript has
13 been designated as "HIGHLY CONFIDENTIAL." During his deposition, Dr. Murphy testified
14 extensively regarding the content of both his opening and rebuttal expert reports, which Microsoft
15 has designated in their entirety "ATTORNEYS' EYES ONLY SUBJECT TO PROTECTIVE
16 ORDER." Moreover, during his deposition, Dr. Murphy discussed confidential information about
17 Microsoft's and Motorola's business and licensing practices and licensing history. Disclosure of
18 this information to third parties and other party employees not covered by the protective order
19 would have the potential to lead to competitive harm. Due to presence of this highly confidential
20 information throughout the transcript, Exhibit 6 should be sealed in its entirety. This document
21 was also submitted as sealed Exhibit 39 to the Second Declaration of Samuel L. Brenner (Dkt. No.
22 406), and is discussed in Motorola Mobility's and General Instrument's Motion to File Documents
23 Under Seal In Support of Its Opposition to Microsoft's Rule 702 Motion to Preclude Testimony by
24 Charles R. Donohoe and Dr. R. Sukumar ("Motorola's 9/5/12 Motion to File Documents Under
25 Seal") (Dkt. No. 402 at 4-5).

Exhibit 7 to the 9/5/12 Wion Declaration is a true and correct copy of the transcript of the deposition of Timothy S. Simcoe, Ph.D., which was taken under oath in Boston, Massachusetts, on August 29, 2012. By agreement of the parties, that transcript has been designated as “CONFIDENTIAL.” During his deposition, Dr. Simcoe testified extensively regarding the content of both his opening and rebuttal expert reports, which Microsoft has designated in their entirety “ATTORNEYS’ EYES ONLY SUBJECT TO PROTECTIVE ORDER.” Accordingly, Exhibit 7 should be sealed. Exhibit 7 was also submitted by Motorola as sealed Exhibit 37 to the Second Declaration of Samuel L. Brenner (Dkt. No. 406), and is discussed in Motorola’s 9/5/12 Motion to File Documents Under Seal (Dkt. No. 402 at 3-4).

Exhibit 8 to the 9/5/12 Wion Declaration is the transcript of the deposition of Matthew R. Lynde, Ph.D., which was taken under oath in San Francisco, California, on August 31, 2012. That transcript has been designated “CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER.” At his deposition, Dr. Lynde testified extensively regarding the content of both his opening and rebuttal expert reports, which Microsoft has designated in their entirety as “MICROSOFT/MOTOROLA CONFIDENTIAL BUSINESS INFORMATION OUTSIDE ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER.” Both Dr. Lynde’s testimony and the expert reports referenced extensively throughout the course of his deposition disclose highly confidential Motorola and Microsoft information relating to business and licensing practices and history. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Accordingly, Exhibit 8 should be sealed in its entirety. This document was also submitted as sealed Exhibit 38 to the Second Declaration of Samuel L. Brenner (Dkt. No. 406), and is discussed in Motorola’s 9/5/12 Motion to File Documents Under Seal (Dkt. No. 402 at 4).

Exhibit 10 to the 9/5/12 Wion Declaration is a document produced by Motorola bearing Bates numbers MOTM_WASH1823_0421001-013. This document, which has been marked “CONTAINS MOTOROLA MOBILITY, INC. AND/OR THIRD PARTY CONFIDENTIAL

1 BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER,” is a presentation that was
 2 gathered from the internal files of a Motorola attorney, and which reflects licensing policy
 3 proposals that apparently were presented at an ETSI meeting. After a reasonable, good-faith
 4 investigation, Motorola has been unable to determine whether this document is publically
 5 available. Given that Motorola believes this document is a confidential document that is not
 6 available to the public, disclosure of this information to third parties and other party employees
 7 not covered by the protective order would have the potential to lead to competitive harm.
 8 Accordingly, Exhibit 10 should be sealed in its entirety.

9 Exhibit 11 to the 9/5/12 Wion Declaration is the August 10, 2012 Rebuttal Expert Report
 10 of Roger S. Smith, which has been marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 11 ONLY.” This report includes an examination of, and discloses, confidential and non-public
 12 financial and business information relating to both Microsoft and Motorola, and relating to
 13 licensing and business practices and history. Disclosure of this information to third parties and
 14 other party employees not covered by the protective order would have the potential to lead to
 15 competitive harm. Accordingly, Exhibit 11 should be sealed in its entirety. This document was
 16 also submitted as sealed Exhibit 63 to the Second Declaration of Samuel L. Brenner (Dkt. No.
 17 406), and is discussed in Motorola’s 9/5/12 Motion to File Documents Under Seal (Dkt. No. 402
 18 at 6).

19 For the reasons stated above, those portions of Microsoft’s Opposition (Dkt. No. 410) that
 20 refer to the confidential information contained in Exhibits 1-3, 6-8, and 10-11 should also be
 21 sealed.

22 **III. CONCLUSION**

23 Defendants do not oppose Microsoft’s 9/5/12 Motion to File Documents Under Seal (Dkt.
 24 No. 401). Nothing herein is intended as a waiver of Defendants’ right to contest Microsoft’s
 25 designation of material as Confidential Business Information in accordance with the terms of the
 26

1 Protective Order entered on July 21, 2011 (Dkt. No. 72). Defendants expressly reserve the right to
2 do so as the circumstances warrant.

3 DATED this 12th day of September, 2012.

4 SUMMIT LAW GROUP PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 12th day of September, 2012.

/s/ Marcia A. Ripley

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